

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION**

JAMES LEE HEBERT,

Plaintiff,

v.

Civil No. 09-14036

COMMISSIONER OF
SOCIAL SECURITY,

DISTRICT JUDGE THOMAS L. LUDINGTON
MAGISTRATE JUDGE CHARLES E. BINDER

Defendant.

MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION
on
DEFENDANT COMMISSIONER’S MOTION TO REMAND
(Doc. 10)

This matter is before the undersigned Magistrate Judge pursuant to an Order of Reference filed October 13, 2009. (Doc. 3.) Defendant sought and was granted several extensions of time in which to file an answer to the complaint. (Docs. 4, 5, 6, 7, 8, 9.) On April 12, 2010, Defendant filed the instant motion seeking remand to the Commissioner of Social Security because the “Office of Disability Adjudication and Review has informed Defendant that it is unable to locate the tape recordings of Plaintiff’s claim file of the administrative hearings held on November 7, 2002, and November 17, 2002.” (Doc. 10 at 2.) Defendant therefore asks the Court to remand the case pursuant to the sixth sentence of 42 U.S.C. § 405(g) to allow for a continued search for the missing recordings or, if it cannot be located within a reasonable time, the Appeals Council will remand the case to an Administrative Law Judge to hold another hearing and issue a decision.” (Doc. 10 at 2.)

Counsel for the Defendant was unable to reach Plaintiff's counsel on the date this motion was filed; thus, concurrence was not obtained. However, after considering the Commissioner's representations, I suggest that good cause nonetheless supports the Commissioner's motion. Should Plaintiff's counsel object to the motion, he may do so in objections to this Report and Recommendation.

Accordingly, **IT IS RECOMMENDED** that the Commissioner's decision be **REVERSED** and the case **REMANDED** to the Commissioner for further proceedings pursuant to sentence six of 42 U.S.C. § 405(g).

s/ Charles E Binder

CHARLES E. BINDER
United States Magistrate Judge

Dated: April 14, 2010

CERTIFICATION

I hereby certify that this Report and Recommendation was electronically filed this date and electronically served on counsel of record via the Court's ECF System.

Date: April 14, 2010

By s/Patricia T. Morris
Law Clerk to Magistrate Judge Binder